IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.263 OF 2005
IN
WRIT PETITION NO.6748 OF 2005

Rajkumar Krishnarao Patil
Adult, Occupation Agriculture
and Sarpanch of Village Ghatane
residing at Village Ghatane,
Taluka Madha, District Solapur .. Appellant.

Versus

1. Prakash Sandepan Kadam ..
2. Hanumant Krushna Patil ..
3. Ashok Krishnarao Patil
   Nos. 1 to 3 all major
   residing at Village Ghatane
   Taluka Madha, Dist.Solapur ..
4. The Additional Collector
   Solapur, having office at
   Solapur ..
5. The Additional Commissioner
   Pune Division, Pune .. Respondents.

Mr.Kanitkar with Mr.G.S.Godbole for the appellant.
Mr.Dilip Bodke for respondent no.1.
Mr.S.S.Salunkhe for respondent no.2.
Mr.S.K.Chinchalikar AGP for respondent nos.4 & 5.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, JJ.

Date of reserving
the judgment : 24th February 2006

Date of prounouning
the judgment : 10th March 2006.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. The appellant - Rajkumar K. Patil has been disqualified for being the Sarpanch of Gram Panchayat, Ghatne under section 14(1)(g) of the

Bombay Village Panchayat Act, 1958 (for short "the Act"). The writ petition under Article 226 and 227 of the Constitution challenging the orders passed by the authorities below under section 14(1)(g) came to be dismissed by the learned Single Judge vide order dated 5.12.2005, hence this appeal under clause 15 of the Letters Patent.

2. The appellant was elected as a member of the Gram Panchayat, Ghatne (for short "the Panchayat") in November 2002 and as its Sarpanch on 24.11.2002. Prior to the election of the appellant, the Zilla Parishad, Solapur (for short "ZP") had awarded a contract to the Panchayat for construction of a "link road" in Harijan Vasti under the special component scheme.

3. The case set up by the appellant is that the construction of the link road was completed on 30.3.2001 and a completion certificate thereof had also been issued by the Executive Engineer and Deputy Engineer of ZP on 28.8.2001. Admittedly, during this period the appellant was not a Sarpanch of the Panchayat. The total cost of the construction incurred by the Panchayat was Rs.4,35,000/-. It appears that the ZP did not release the payment for the said work until March,

2003. On 31.3.20003 the Panchayat received an amount of Rs.4,35,000/- from ZP. The Gram Sevak, thereafter, under the instructions of the appellant, issued a cheque of Rs.4,35,600/- in favour of the appellant on 7.4.2003. The appellant, after the encashment of the cheque withdrew the said amount in cash from his personal account and handed it over to the Gram Sevak. The Gram Sevak, in turn, disbursed it to the different agencies, which allegedly constructed the link road. The necessary entries of the payment made in cash to various agencies were made in the General Cash Book - form No.5.

4. The instant proceedings under section 14(1)(g) were initiated at the instance of respondent nos.1 and 2. Their application, addressed to the Collector, Solapur, was numbered as Gram Panchayat Application No.2 of 2004. They sought disqualification of the appellant under section 14(1)(g) contending that the amount of Rs.4,53,600/- received by the Panchayat for the construction of link road done by the Panchayat through different agencies was misappropriated by the appellant and Gram Sevak. It appears that the Chief Executive Officer (for short "CEO") was entrusted an enquiry to be conducted into the

allegations made against the appellant and in pursuance thereof a report was called for Block Development Officer (for short "BDO"). The report from Extension Officer was also called for. The Extension Officer submitted his report to BDO on 29.3.2004 and BDO in turn submitted his report to CEO on 31.3.2004. The CEO conducted an enquiry and submitted his report to the Collector on 24.4.2004. The reports of BDO, Extension Officer and CEO are the parts of the record.

5. The Collector thereafter seems to have proceeded to consider Gram Panchayat Application No.2 of 2004. The appellant in the course of enquiry filed his reply. After considering the material placed on record and hearing the parties, the collector held that no ground for disqualifying the appellant under section 14(1)(g) of the said Act was made out since the appellant had no concern or interest in the work of construction of the link road. The appellant was not the Sarpanch when the construction was done and, therefore, he cannot be said to have had any interest in the contract. The Collector, accordingly, vide his order dated 10.5.2004 dismissed the complaint. Feeling aggrieved by the said order, respondent nos.1 and 2 filed Gram Panchayat appeal No.53 of 2004 before

the Additional Commissioner, Pune Division, Pune. In the meanwhile, on 11.1.2005, respondent no.2 withdrew from the proceedings stating that he did not want to prosecute the complaint and that he had no grievance against the appellant. Respondent No.1, however, prosecuted the said appeal. The Additional Commissioner, by order dated 29.9.2005 allowed the appeal holding that the appellant is liable to be disqualified under section 14(1)(g) of the Act. Against that order the writ petition was filed before this Court which came to be dismissed by the learned Single Judge vide his order dated 5.12.2005, impugned in the instant appeal. The learned Single Judge after considering the conduct of the appellant has held that he has been rightly disqualified under section 14(1)(g) of the Act. It has been observed that merely because the contract was awarded and completed prior to the appellant's election as Sarpanch, he cannot shirk his responsibility since admittedly for the said contract, a cheque was issued in his favour and the amount was withdrawn by him in cash and then allegedly was disbursed to different agencies. This conduct in view of the learned Single Judge clearly indicates that the appellant has taken "share" in the contract by indulging in the illegal method of payment.

6. Respondent No.1 has filed reply affidavit. The case set up by respondent no.1 in the instant proceedings was that since 1985 continuously some or the other member of the appellant's family was Sarpanch of the Panchayat. In 1985, his father was elected for a period of five years thereafter his brother, then his mother and now the appellant. One of the brothers of the appellant is also sitting member of the Panchayat. A reference to the reports of the BDO and Extension Officer is also made in the counter. A specific allegation is made that the false vouchers were prepared showing that the payments of Rs.2,56,000/- and Rs.1,08,000/- were made to one Nagesh Uddhav Patil and Rs.25,000/- plus Rs.39,000/- to one of Dhanashree Earthmovers and Rs.25,000/- to the labourers. It is further stated that no such payment was in fact made and that they had not done the construction of the link road. The photographs were also placed on record showing that no construction of the link road was done. A reference was also made to the affidavit of the Manager of Dhanashree Earthmovers who has denied to have done such work and received the payment thereof as alleged. Respondent no.1 has further stated that during the same period the appellant

purchased the land in his wife's name. It is further alleged that after the complaint was made by respondent nos.1 and 2, the false record was created to show that payment for the construction of work was made to aforesaid agencies. It appears that the residents of Harijan Vasti for whose benefit the road was constructed have also filed affidavits stating that no such link road was constructed. The appellant in rejoinder has denied all the allegations made in reply affidavit filed by respondent no.1.

7. Mr.Godbole, learned counsel for the appellant submitted that any provision in the statute which has an effect of disqualification of the elected representative of people has to be strictly construed. The principle of common law of drawing inference will not apply in such cases. He drew our attention to the provisions of section 14(1)(g) and submitted that the appellant had no concern whatsoever with the contract or the work done at the instance of panchayat of the link road since that was done much before his election as Sarpanch of the panchayat. He cannot be said to have had any interest or share, direct or indirect, in the said work done by the panchayat or on behalf of the panchayat. He further submitted that the

adjudicatory authority, namely, the Collector has recorded finding of fact on the basis of material on record holding that the appellant was not involved in the contract or received payment for the work done by the panchayat and has received any share or interest in it. The revisional authority should not have interfered with the finding of fact. He then submitted that the Commissioner without disturbing the finding of facts recorded by the Collector reached a different conclusion which is not permissible in law. Mr.Godbole in support of his aforestated submissions placed reliance upon the following judgments: **Gulam Yasin Khan V. Sahebrao Yeshwantrao Walaskar and Anr. AIR 1966 SC 1339**, **Nisar Ahmad Ibrahim Khan Vs. Deolali Cantonment Board and Others 1987 (Supp) SCC 562**, **Tejilal Vs. State AIR 1957 Madhya Pradesh 88**, **Bhagwan Singh V. Rameshwar Prasad Shastri and Others AIR 1959 Supreme Court 876**. On the other hand Mr.Bodake, learned counsel for respondent no.1 submitted that the Commissioner and the learned Single Judge on facts have concurrently held that the appellant had taken share in the contract and indulged in illegal method of payments and in view of the said finding this Court need not interfere with the same as the finding is based on the material on record. In view of the findings

recorded on facts the judgment of the Apex Court in **Nisar Ahmad Ibrahim Khan's** case would not apply to the present case. Mr.Bodake further submitted that there is sufficient material on record which was taken into consideration by the Commissioner and the learned Single Judge while recording aforestated finding and that clearly attract the provisions of section 14(1)(g) of the Act. He drew our attention to the order of the Commissioner to counter the submission of Mr.Godbole that the Commissioner did not disturb the findings of fact recorded by the Collector and pointed out that the Commissioner in fact has reversed the findings of fact recorded by the Collector based upon the material before him.

8. Before we consider the relevant provisions it would be advantageous to see what was the question that fell for the consideration of the Supreme Court in **Gulam Yasin Khan's** case, on which a heavy reliance was placed by the appellant. In **Gulam Yasin Khan's** case the short question that fell for the consideration was whether by virtue of the relationship of Gulam Yasin Khan - the appellant therein with his son Khalid Khan, who was in the employment of the Municipal Committee, the appellant can be said to have had any indirect

share or interest in the employment of his son with the municipal committee. The Supreme Court after considering the expressions "interest", "directly or indirectly", and "share" in any contract held that the "interest" or "share" has to be in the contract itself. In view thereof it was further observed that "When we are enquiring as to whether the appellant is interested directly or indirectly in the employment of his son, we cannot overlook the fact that the enquiry is not as to whether the appellant is interested in the son, but the enquiry is whether the appellant is interested in the employment of the son. The distinction between the two enquiries may appear to be subtle, but, nevertheless, for the purpose of construing the clause, it is very relevant. Considering from this point of view on the facts proved in this case, we find it difficult to hold that by mere relationship with his son, the appellant can be said to be either directly or indirectly interested in his employment". While interpreting the said provisions the Supreme Court observed that:

> . "In order to incur disqualification, what the clause requires is "interest or share in any contract". It may either be a share or an interest; and if it is an interest, the interest may be direct or indirect. It cannot mean mere sentimental or friendly interest; it must mean interest which is pecuniary, or

> material, or of a similar nature. If the interest is of this latter category, it would suffice to incur disqualification even if it is indirect."
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> (emphasis supplied)

. From the bare perusal of the observations made by the Supreme Court in the light of the question that fell for its consideration, in our opinion, this judgment relied upon by the appellant would not help him.

9. Similarly the judgment relied upon by the appellant in **Tejilal's case** (supra) also be of no use to the appellant since the issue involved in that case was altogether different. There, it was alleged that the election of the appellant therein as President of a Municipality, was invalid on the ground that he had taken a plot on contract from the Municipal Committee and had an interest in a contract with the committee within the meaning of section 15(1), C.P. and Berar Municipalities Act, 1922, and it was found that the appellant did in fact offer a bid for his father but denied that he took stall for himself and had any interest in it, unless it is alleged and found that the appellant therein had taken it benami or that his father had taken it for the appellant's benefit, it cannot be said that the appellant had interest in the

contract merely because, he was a member of a joint Hindu family. It is against this backdrop, it was held that in the absence of an enquiry on the point, it cannot be said that the appellant had incurred a disqualification under section 15(1). In the present case it is not alleged that enquiry was not held and that the appellant was not given an opportunity. Moreover, in the present case, on facts most of the findings have not been and could not be disputed.

10. That takes us to consider the provisions of section 14(1)(g) of the Act, with which we are primarily concerned in the instant appeal. The relevant part of the said provision reads thus:

> "S.14. Disqualifications--
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> (1) No person shall be a member of panchayat, or continue as such, who--
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> ....
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> ....
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> (g) has directly or indirectly, by himself or his partner, any share or interest in any work done by order of the panchayat, or in any contract with, by or on behalf of, or employment with or under; the panchayat; or."

. A plain reading of this provision, insofar as the instant appeal is concerned, would show that

if a member of the panchayat has directly or indirectly any share or interest in any work done by or by order of the panchayat or on behalf of the panchayat, he/she incurs disqualification for being a member of the panchayat. In order to incur disqualification what clause (g) requires is "interest or share" in any work done by or on behalf of the panchayat. It may either be a "share or interest" and that it may be "direct or indirect". Keeping in view the interpretation made by the Supreme Court, in **Gulam Yasin Khan's** case, of section 15(1) in C.P. and Berar Municipal Act, (2 of 1922), in our opinion, expressions "interest or share", "direct or indirect" in section 14(1)(g) of the Act, would mean pecuniary interest or share, direct or indirect, in the work done by or on behalf of the Panchayat. In other words, if it is established that a member of Panchayat has received any pecuniary interest or share, direct or indirect, in the work done by or on behalf of the panchayat, he/she is liable to be disqualified for being a member of the Panchayat. This provision cannot receive an unduly narrow or restricted construction. Even a liberal construction of section 14(1)(g) would not escape the conclusion in the instant case, as noted by the Apex Court in **Gulam Yasin Khan's** case (supra), that the "interest

or share" has to be either in any work done by order of the panchayat, or on behalf of the panchayat.

11. We have examined the facts of the instant case in the light of the submission of Mr.Godbole mainly based on the judgment of the Supreme Court in **Gulam Yasin Khan's** case and also the provisions of section 14(1)(g). Admittedly, the contract was awarded to the Gram Panchayat itself which got the work of link road done through different agencies. It appears that the sub-contracts were given to those agencies by the panchayat and they had, according to the appellant, completed the work of construction of the link road in 2001 itself. Whereas the appellant was elected as Sarpanch in November 2002. It is true that the contract was given to the panchayat in earlier term of the panchayat when the appellant was not Sarpanch, however, it may be noticed that he was a member of the panchayat even in the earlier term and his mother was Sarpanch at the relevant time. That all happened in March 2001 and the work was completed and the completion certificate thereof was issued in August 2001. Even against these facts we find it difficult to accept the submission that the appellant had no concern whatsoever with the

contract or work done on behalf of the panchayat by the sub contractors. Admittedly, the payment of work was not made to the sub-contractors until 2003. It is settled position of law that the contract subsists till the payment is made and/or amount payable to the contractor or sub-contractor who did the work was awaiting settlement. The contract was, therefore, not complete and it was subsisting till 2003 when the amount was released by ZP towards the payment of the link road. The appellant cannot claim that he had no concern with the contract of the link road. The sub-contract given to the different agencies must be treated as subsisting since the payment had not been done when the appellant took over as the Sarpanch of the panchayat. He cannot shirk his responsibility to make payment for the work of link road done on behalf of the panchayat. Even if it is accepted that the construction of link road was in fact done and payments were liable to be released in favour of different agencies, as claimed by the appellant, such payment ought to have been made by following the established procedure and observing all norms for making payments by the Panchayat. The Sarpanch had no reason or justification for transferring the amount in his personal account and withdraw the same in cash which thereafter was allegedly paid to

the different agencies. Except the record maintained by the Gram Sevak and the appellant, who allegedly misappropriated the amount, showing that such payment was made to the sub contractors, the appellant has not produced any other material to show that in fact such payments were made by the panchayat. There was absolutely no justification for the modus operandi adopted by the appellant and the Gram Sevak for making alleged payment to the different agencies.

12. We examined the modus operandi adopted by the appellant and the Gram Sevak in the light of the specific allegations made against them by respondent no.1 at whose instances the proceedings under section 14(1)(g) were initiated. Every allegation is supported by some or other document placed on record. The construction of the link road was to be done under the special component scheme. It is alleged that no such construction was done. In support of this allegation, respondent no.1 has placed reliance upon the reports of the Extension Officer dated 29.3.2004 and BDO, Panchayat Samitee, Kuruwadi dated 31.3.2004 as also of CEO dated 24.4.2004. We perused all the reports. They clearly show that the construction of the link road was not done and

the false vouchers were prepared by the appellant and Gram Sevak and on the basis thereof made payments to the agencies which, according to them, executed the work of link road. One of such person/agency, which was allegedly paid substantial amount, was one Nagesh Uddhav Patil. He is admittedly a close relative of the appellant. The Manager - Pintu Londhe of one Dhanashree Earthmovers, the another alleged recipient of the amount, has filed an affidavit in the instant proceedings stating on oath that they have not done the work of link road and has denied to have received any payment in respect thereof. He has also denied his signature on the receipt produced on record showing that the payment was made by the appellant and Gram Sevak to Dhanashree Earthmovers. We perused the relevant documents and the affidavit of Pintu Londhe which clearly supports the allegation made by respondent no.1 against the appellant. The appellant has not made any efforts whatsoever to bring any material on record in rebuttal. He could have either examined Nagesh Udhav Patil or the owner of Dhanashree Earthmovers or could have filed their affidavits in support of his claim. No other material is brought on record to show that the payment was in fact made to those agencies. Had the payment, as claimed by the

appellant, been made to the aforestated agencies, he could have produced the material in the form of affidavit or the statement of bank accounts in support thereof. As a matter of fact the material placed on record by respondent no.1 clearly show that no such payment was in fact made to those agencies. Mere entries made in the record of the panchayat would not absolve the appellant of the allegations made against him. It was vehemently contended that no agency has come forward making grievance against the appellant or Gram Sevak of not having received such payment. This submission deserves to be rejected outright for a simple reason that if such work in fact was not done by them, there was no reason, why they should make any grievance against the panchayat or the appellant.

13. The next allegation, as reflected in the reply affidavit, may be noticed at this stage. The appellant, who received an amount of Rs.4,53,600/- by cheque on 7.4.2003, has admittedly purchased an agricultural land on the very day in the name of his wife and this fact has not been denied by him. Similarly, we cannot overlook the fact that the appellant, though was not Sarpanch in March 2001, when the work of link road was allotted to the Gram Panchayat, he was its member and his mother was

Sarpanch. This has not been disputed by the appellant.

14. Mr.Godbole, learned counsel for the appellant, submitted that under the provisions in statute which has the effect of disqualification of the elected representative of people has to be strictly construed and that the common law of principle of drawing inference will not apply. In support of this proposition the reliance was placed upon the judgment of the Supreme Court in **Nisar Ahmad Ibrahim Khan Vs. Deolali Cantonment Board and Others 1987 (Supp) SCC 562**. The Apex Court in that case in paragraph 13 and 14 held thus:

> "13. It hardly requires any argument to demonstrate the fallacy implicit in and underlying this process of ratiocination which runs in the teeth of the specific statutory mandate. It is no doubt true that the rule of disqualification is based on a statutory principle that a person who has financial obligations to the "Board" may not be able to discharge his public office objectively and in public interest. But the disqualification itself must be determined in strict compliance with the statute.
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> 14. There is no common law of elections. The proceedings calling in question the validity of an election are purely statutory proceedings. An election contest is not an action at law or a suit in equity, but is purely a statutory proceedings unknown to the common law and the court possess no common law power. It is trite proposition that in such proceedings statutory requirements must

> strictly be established. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with."

. It may be necessary to notice that in what circumstances the aforestated proposition has been laid down by the Supreme Court. The election of the appellant therein was questioned on the ground that he suffered from, and was under, a disqualification for being chosen as and for being a member of the board under section 28(2)(h) of Cantonment Act, 1924. Section 28(2)(h) with which the Apex Court was concerned reads thus:

> "Section 28(2)(h) provides:
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> (2) person shall be qualified for being chosen (whether by election or nomination) as, and for being as a member of a Board, if he --
> (h) fails to pay any arrears of any kind due to him otherwise than as an agent, receiver, trustee or an executor to the Board within thirty days after the notice in this behalf has been served upon him; or"

. In the face of clause (h), the facts further disclose that the Cantonment Board had issued certificate stating that the notice of demand in Schedule I of the Cantonment Board from Deolali for payment of arrears of lease land has not been issued. The learned District Judge though held that the requirement of service of the statutory notice contemplated by the provisions of

clause (h) must be satisfied, proceeded to observe that the notice means a knowledge on the part of a person and not notice in writing. It is against this backdrop the Supreme Court observed that in such proceedings "statutory requirement", must strictly be established. In our opinion, this judgment will not help the appellant at all since the facts in the present case are altogether different. Moreover, we did not find any reason to disturb the findings of fact recorded by the Commissioner and the learned Single Judge in the impugned order. The Judgment in **Bhagwan Singh's case** (supra) would also be of no avail to the appellant.

15. In the present case we have recorded our satisfaction on the facts itself and have concurred with the findings recorded by the learned Single Judge in the impugned order that the appellant did take share in the sub-contract and also indulged in illegal method of payment. In view thereof, the judgments relied upon by Mr.Godbole would not apply to the facts of the present case. The manner in which the appellant got the amount transferred in his personal account and had withdrawn the same in cash and then allegedly made over to the sub-contractors, we are satisfied that the

appellant did take share or interest in the work of link road and, therefore, has rightly been disqualified under section 14(1)(g) of the Act. The provisions of section 14(1)(g) were introduced for maintaining the purity of administration and are, therefore, required to be construed accordingly. We find no reason to interfere with the order passed by the learned Single Judge. The letters patent appeal is, accordingly, dismissed. No costs.

16. At this stage Mr.Godbole, the learned counsel for the appellant states that the interim relief that was operating during pendency of the appeal be continued for a period of five weeks. Mr.Bodke, the learned counsel for respondent no.1 objects for granting such protection. However, in the interest of justice, we are inclined to grant

the prayer of Mr.Godbole. In the circumstances, interim relief dated 16.12.2005 shall remain operative for a period of five weeks from today.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)